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HONORABLE JOHN A. ROSMEISEL

10 UNITED STATES BANKRUPTCY COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON

14 IN RE:

16 HODGES, THOMAS AND TERESA,
18 Debtors.

NO. 03-05721-JAR7

20 THOMAS AND TERESA HODGES
22 (husband and wife),

ADV NO.

A05-80029-JAR7

24 Plaintiffs,

26 v.

REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

28 ARMADA fdba
30 COMMERCIAL COLLECTION SERVICE,
INC. (a Washington Corporation),

32 Defendant.

34 FACTS

36 The defendant filed a response which indicates that it in fact attempted to
38 collect \$250.00 which was discharged by the plaintiffs' chapter 7. Further, even
40 assuming that the all fees were allowed as defendant claims (the \$250.00 plus
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REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT – 1



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2 another \$495.00 for \$745.00), the defendant attempted to collect \$1,269.13 on
4 October 8, 2004. The defendant also sued the plaintiffs during the dispute period.

6 ANALYSIS

8 The undisputed facts indicate that violations of bankruptcy law and the Fair
10 Debt Collection Practices Act occurred

12 I. DEFENDANT ACTED IN CONTEMPT OF THE INJUNCTION.

14 The defendant freely admits that the plaintiffs paid \$700.00 before the filing
16 of the bankruptcy. Defendant also admits that the pre-petition balance of attorney
18 fees was \$250.00. Plaintiff contends this balance should be \$200.00, but will
20 concede for purposes of this motion that the amount is \$250.00. This amount
22 discharged when the plaintiffs received their discharge. *In re Jastrem*, 253 F.3d 438
24 (9th Cir. 2001).

26 Plaintiffs sent notices to the defendant in an attempt to stop it from taking any
28 further action. However, the defendant sued the plaintiffs *twice* in state District
30 Court in an attempt to collect the discharged fee. Plaintiffs were left with no
32 alternative but to seek legal counsel. The defendant is liable for this action.

34 II. ARMADA VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT.

36 The defendant did not contest the issues raised by its actions in suing the
38 plaintiffs during the dispute period. Nor did it dispute the fact that it was attempting
40 to collect \$1,269.13 on the debt it now claims is \$745.00. Defendant does not
42

**REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT – 2**



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2 address the fact that the filing of the lawsuit of November 9, 2004 violated 11

4 U.S.C. 1692g.(2):

6 If the consumer notifies the debt collector in writing within the thirty-day
8 period described in subsection (a) of this section that the debt, or any
10 portion thereof, is disputed, or that the consumer requests the name
12 and address of the original creditor, the debt collector shall cease
14 collection of the debt, or any disputed portion thereof, until the debt
collector obtains verification of the debt or a copy of a judgment, or the
name and address of the original creditor, and a copy of such
verification or judgment, or name and address of the original creditor,
is mailed to the consumer by the debt collector.

16 The filing and service of the lawsuit violated this section, since the debt
18 collector did not “shall cease collection of the debt, or any disputed portion thereof,
20 until the debt collector obtain[ed] verification of the debt.”

22 The defendant did not address the issue of whether it violated 15 U.S.C. §
24 1692f:

26 A debt collector may not use unfair or unconscionable means to collect
28 or attempt to collect any debt. Without limiting the general application
30 of the foregoing, the following conduct is a violation of this section:

32 (1) The collection of any amount (including any interest,
34 fee, charge, or expense incidental to the principal
obligation) unless such amount is expressly authorized by
the agreement creating the debt or permitted by law.

36 The defendant attempted to collect \$1,269.13 on the debt it claims is
38 \$750.00.

40 Finally, defendant did not defend the sending of a notice on which was
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**REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT – 3**



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2 clearly visible on the outside of the envelope: "you have a total of \$1278.04 owing
4 in our office at". This communication violates 15 U.S.C. § 1692c.(b).

6 (b) Communication with third parties--Except as provided in section
8 1692b of this title, without the prior consent of the consumer given
10 directly to the debt collector, or the express permission of a court of
12 competent jurisdiction, or as reasonably necessary to effectuate a
14 postjudgment judicial remedy, a debt collector may not communicate,
in connection with the collection of any debt, with any person other
than the consumer, his attorney, a consumer reporting agency if
otherwise permitted by law, the creditor, the attorney of the creditor, or
the attorney of the debt collector.

16 Plaintiffs has established three separate violations of the Act. Any one is
18 sufficient for liability.

20 CONCLUSION

22 The defendant wilfully violated the bankruptcy injunction. The defendant also
24 violated the Fair Debt Collection Practices Act. Plaintiffs' motion should be granted
26 as requested.
28

30
32 Dated: August 30, 2005

Respectfully submitted,
/s/ Timothy W. Durkop

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